

DEPARTMENT OF ADMINISTRATION



DIVISION OF SENIOR SERVICES

2 AAC 42

ASSISTED LIVING HOMES

As Amended Through June 28, 2002

TITLE 2. ADMINISTRATION.

CHAPTER 42. ASSISTED LIVING HOMES.

Article

1. Standards for Assisted Living Homes (2 AAC 42.010)
2. Financial Assistance for the Protection of Vulnerable Adults in Assisted Living Homes (2 AAC 42.200 – 2 AAC 42.299)
3. Hearing Procedures (2AAC 42.300 – 2 AAC 42.390)
4. General Provisions (2 AAC 42.400)

ARTICLE 1. STANDARDS FOR ASSISTED LIVING HOMES.

Section

10. Assisted living homes regulations adopted by reference

2 AAC 42.010. ASSISTED LIVING HOMES REGULATIONS ADOPTED BY REFERENCE. The assisted living homes regulations in 7 AAC 75, as amended through April 6, 2002, were developed jointly by the Department of Administration and the Department of Health and Social Services. By the adoption of this section, those regulations are made applicable to facilities licensed by the Department of Administration as well as to those licensed by the Department of Health and Social Services. (Eff. 7/1/95, Register 134; am 9/28/2001, Register 159; am 4/6/2002, Register 162)

Authority:	AS 47.33.005	AS 47.33.100	AS 47.33.540
	AS 47.33.010	AS 47.33.400	AS 47.33.920
	AS 47.33.040	AS 47.33.410	

**ARTICLE 2. FINANCIAL ASSISTANCE FOR THE PROTECTION OF
VULNERABLE ADULTS IN ASSISTED LIVING HOMES.**

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2 AAC 42.200. APPLICABILITY. (a) The department has determined that a need exists among the state's vulnerable adult population for the availability of nonmedical residential care. Except as provided in (b) of this section, the purpose of the program described in 2 AAC 42.200 – 2 AAC 42.299 is to provide financial assistance to eligible vulnerable adults who require the protective oversight of an assisted living home. The program objective is to enable those adults to

(1) obtain the level of care that an individual could receive in the individual's own home from interested friends or relatives; and

(2) live in the least restrictive setting possible.

(b) Regulations dealing with general relief financial assistance available to residents of assisted living homes licensed by the Department of Health and Social Services are set out at 7 AAC 47.300 – 7 AAC 47.525. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.205. ASSISTED LIVING CARE. Assisted living care is a range of care described in AS 47.33 and 7 AAC 75, adopted by reference in 2 AAC 42.010, that includes more than housing and food service, but does not include continuous nursing or medical care. Assisted living care encompasses 24-hour supportive and protective services in the activities of daily living and in the instrumental activities of daily living for a vulnerable adult, as those services are described in the vulnerable adult's residential services contract executed under AS 47.33.210 and assisted living plan prepared under AS 47.33.220 and 47.33.230. The care is provided in a residential environment and encourages independent living to the extent possible for each resident. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.33.210 AS 47.33.230
AS 47.24.017 AS 47.33.220 AS 47.33.920

2 AAC 42.210. ASSISTED LIVING HOME. In this chapter, an assisted living home is a home licensed by the department under AS 47.33 and 7 AAC 75, adopted by reference in 2 AAC 42.010, and with which the department has entered into an assisted living home grant agreement under 2 AAC 42.270. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.215. ELIGIBLE INDIVIDUALS. Financial assistance under this chapter is available for a vulnerable adult

- (1) who is a resident of the state;
- (2) who is 18 years of age or older;
- (3) who has been assessed for eligibility by a care coordinator or other person approved by the department;
- (4) who has
 - (A) a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or another condition closely related to mental retardation that significantly impairs intellectual functioning and adaptive behavior;
 - (B) a hearing, speech, visual, orthopedic, or other major health impairment that significantly impedes participation in the social, economic, educational, recreational, and other activities generally available to the individual's nonimpaired peers in the community; or
 - (C) a significant deficit in adaptive behavior in the area of self-care, communication of needs, mobility, or independent living that may be the result of the aging process, a major health impairment, an emotional health disturbance, or alcohol or drug dependence;
- (5) who, without assisted living care is subject to, or at risk of, abuse, neglect, or exploitation by others;
- (6) whose income, if any, does not exceed the amount permitted by 2 AAC 42.220;
- (7) whose resources, if any, do not exceed the amount permitted by 2 AAC 42.225; and
- (8) who has applied for financial assistance from other agencies, organizations, or programs as required by 2 AAC 42.235, and has exhausted the use of alternative financial assistance, if any, as required by 2 AAC 42.240(a). (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.220. INCOME. (a) Subject to allowable exclusions, to be eligible for financial assistance under this chapter, the total monthly countable income, if any, of an individual described in 2 AAC 42.215 may not exceed the minimum daily reimbursement rate set under 2 AAC 42.285.

(b) Unless otherwise specified in 2 AAC 42.220 – 2 AAC 42.234, income not received in cash is valued at the current fair market value of that which is received.

(c) Income is determined on a monthly basis except that earnings from self-employment are computed on a yearly basis and then divided by 12 to determine monthly income. Unless otherwise specified, any property, money, or service described in the definition of “income” set out in 2 AAC 42.234 is considered income in the month of receipt but is considered a resource in any calendar month after the month of receipt.

(d) For the purpose of determining eligibility of an individual who does not receive monthly SSI payments, income is that received or expected to be received in the month for which assistance is to be provided.

(e) For an individual who also receives monthly SSI payments, income is equal to the applicable SSI payment standard for the month for which assistance is provided, less the value of any support and maintenance furnished the applicant in kind in the relevant month.
(Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.222. INCOME EXCLUSIONS. (a) Certain types of income, excluded under the APA program in 7 AAC 40, are also excluded under this chapter in determining the total monthly income of an individual described in 2 AAC 42.215, together with spousal income, if any, under 2 AAC 42.230, including

(1) cash or other property received from the sale, exchange, or other disposition of a resource;

(2) the premium payment for supplementary medical insurance under Title XVIII of the Social Security Act (42 U.S.C. 1395s), if paid by a third party;

(3) the value of any third-party payment for medical care or medical services, including payment for room and board furnished during medical confinement;

(4) the value of any support and maintenance furnished in kind;

(5) the value of any social services furnished by a governmental or private agency;

(6) income tax refunds;

(7) the amount of any ordinary and necessary expense incurred in getting or receiving unearned income, except for income tax;

(8) the amount of any ordinary and necessary expense of operating and maintaining property that is producing rent, except for depreciation and acquisition costs other than interest;

(9) \$1,500 of the proceeds of any life insurance policy or the amount spent by the beneficiary of the policy on the insured's last illness and burial, whichever is less;

(10) any income that would be excluded under 2 AAC 42.227 if the income were considered to be a resource;

(11) any taxes on real property or food refunded by a public agency;

(12) any portion of a grant, scholarship, or fellowship that is not made or insured by the United States Department of Education but is used to pay for tuition, fees, books, or supplies at an educational institution;

(13) the value of any agricultural products or foodstuffs obtained through subsistence activities, if not obtained through a trade or business, and consumed by the individual or that person's immediate family;

(14) any earned income that does not exceed \$10 a month and either is received less frequently than twice a quarter or cannot be reasonably anticipated;

(15) any unearned income that does not exceed \$20 a month and either is received less frequently than twice a quarter or cannot be reasonably anticipated;

(16) payments made under AS 47.45 (Alaska Longevity Bonus);

(17) payments for the foster care of a child who is ineligible for SSI or assistance under 7 AAC 40 (Adult Public Assistance);

(18) one-third of any income received by a child from an absent parent; in this paragraph, "child" includes a person who is not married, not the head of a household, and either under 18 or under 22 and attending a school, college, university, or course of vocational or technical training to prepare for gainful employment;

(19) \$1,200 a calendar quarter, not to exceed \$1,620 a year, of the earned income of a person under 22 with a disability, including blindness, who regularly attends school, as provided in 20 C.F.R. 416.1112;

(20) \$65 a month of any earned income plus one-half of the remainder;

(21) the amount of any expenses for aid to the blind that are reasonably attributable to the earning of income;

(22) income needed to fulfill a plan for achieving self-support that has been approved by the Social Security Administration or by the division of vocational rehabilitation;

(23) the first \$20 a month of income, earned or unearned, other than unearned income based on need;

(24) a permanent fund dividend issued under AS 43.23;

(25) veterans' benefits paid under 38 U.S.C. 1110 or 38 U.S.C. 1131;

(26) compensation to volunteers under the federal retired and senior volunteers, foster grandparents, and senior companion programs (42 U.S.C. 5001, 42 U.S.C. 5011, and 42 U.S.C. 5013, respectively), in accordance with 42 U.S.C. 5044(f);

(27) federal World War II restitution payments made under 50 U.S.C. App. 1989b-4 and 1989c-5;

(28) payments under AS 18.67 (crime victim compensation);

(29) Agent Orange Settlement Fund payments made under P.L. 101-201 and sec. 10405 of P.L. 101-239;

(30) burial spaces owned by the individual and intended for use by the individual or the individual's spouse or dependent; and

(31) the income of the individual's spouse, if any, that is protected under 2 AAC 42.230 and, if the spouse's income is less than \$2,000 a month, so much of the individual's income as will bring the spouse's income up to \$2,000 a month.

(b) The exclusions in (a) of this section apply first to unearned income and then to earned income in the order in which they are listed. Unless otherwise specified, income excluded in this section is not included as a resource. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.225. RESOURCES. (a) Subject to allowable exclusions, to be eligible for financial assistance under this chapter, the total resources, if any, of an individual described in 2 AAC 42.215 may not exceed

(1) \$2,000 for the individual; or

(2) \$3,000 for an individual living with a spouse, regardless of whether the spouse is eligible for assistance under this chapter.

(b) If an individual has nonexcludable resources that do not exceed the applicable resource limit at any time on the first day of a calendar month, the applicant is considered to meet the resource requirement for that month.

(c) To determine an individual's total resources, the department will apply the provisions of

(1) 2 AAC 42.227, dealing with excluded resources; and

(2) 2 AAC 42.228, dealing with the disposal of excess resources.

(d) Any cash or other property received from the sale, exchange, or other disposition of a resource retains the character of a resource. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.227. RESOURCE EXCLUSIONS. (a) Certain types of resources, excluded under the APA program in 7 AAC 40, are also excluded under this chapter in determining the resources of an individual described in 2 AAC 42.215, together with resources of a spouse, if any, under 2 AAC 42.230, including

- (1) the individual's home if used as the principal place of residence, all land contiguous to it, and all outbuildings necessary for operation of the home;
- (2) household goods and personal effects having an equity value of \$2,000 or less, one wedding ring, one engagement ring, and any household goods or personal effects the retention of which is necessitated by the individual's physical condition, such as a prosthetic device or hospital bed;
- (3) one motor vehicle regardless of value if the motor vehicle is used by the individual or a member of the individual's family for employment or for obtaining medical treatment on a regular basis, or if the motor vehicle has been modified for use by a person with a disability; any other motor vehicle is excluded to the extent that its retail market value does not exceed \$4,500;
- (4) property necessary for the individual's self-support, including real or personal property used in a trade or business, if the property is producing income consistent with its value;
- (5) property of a person with a disability, including blindness, that is needed to fulfill a plan for achieving self-support that has been approved by the Social Security Administration or by the division of vocational rehabilitation;
- (6) stock held by an Alaska Native in a regional or village corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1606 and 1607);
- (7) term insurance and burial insurance without regard to value and life insurance if the face value of life insurance policies on an individual does not exceed \$1,500; if the face value of life insurance exceeds \$1,500, its cash surrender value is a resource;
- (8) cash received from an insurance policy to replace or repair an excluded resource if used for repair or replacement within three months of receipt in the case of personal property and within six months in the case of real property;
- (9) allotted land held by an individual who is a member of, or eligible for membership in, a federally recognized Indian tribe if the land cannot be alienated without the permission of the tribe or the federal government;

(10) payments made under Title II of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (42 U.S.C. 4636);

(11) payments to members of the Blackfeet and Gros Ventre tribes under Public Law 92-254 (25 U.S.C. 1264) and Indian per-capita payments made under Public Law 93-134 (25 U.S.C. 1407) to the extent excluded by 20 C.F.R. 416.1236;

(12) the value of the food stamp allotment provided under 7 U.S.C. 2011 – 7 U.S.C. 2036 (Food Stamp Program); the value of assistance provided under 42 U.S.C. 1751 – 42 U.S.C. 1769h (School Lunch Programs); the value of assistance provided under 42 U.S.C. 1771 – 42 U.S.C. 1791 (Child Nutrition); and the value of federally donated foods distributed under 7 C.F.R. Part 250, 7 C.F.R. Part 251, sec. 32 of Public Law 74-320, or 7 U.S.C. 1431 (sec. 416 of the Agriculture Act of 1949);

(13) any grant or loan to an undergraduate student for educational purposes made or insured by the United States Department of Education under Public Law 90-575 (20 U.S.C. 1070 – 1089);

(14) payments to volunteers under 42 U.S.C. 4950 – 42 U.S.C. 5085 (Domestic Volunteer Services);

(15) in accordance with 43 U.S.C. 1626(c), distributions received by an individual Alaska Native or descendant of an Alaska Native from a Native corporation formed under the Alaska Native Claims Settlement Act as follows:

(A) cash, including cash dividends on stock received from a Native corporation, is disregarded to the extent that it does not, in the aggregate, exceed \$2,000 per individual each year; the \$2,000 limit is applied separately each year, and cash distributions up to \$2,000 that an individual received in a prior year and retains in subsequent years will not be counted as a resource in those years;

(B) stock, including stock issued or distributed by a Native corporation as a dividend or distribution on stock;

(C) a partnership interest;

(D) land or an interest in land, including land or an interest in land received from a Native corporation as a dividend or distribution on stock;

(E) an interest in a settlement trust;

(16) the value of any assistance paid with respect to a dwelling unit under the United States Housing Act of 1937, the National Housing Act, sec. 101 of the Housing and Urban Development Act of 1965, or Title V of the Housing Act of 1949 as provided in 42 U.S.C. 1382a(b)(14) and 42 U.S.C. 1382b(a)(8); and

(17) the value of a limited entry fishing permit if the holder of the permit uses the permit to produce income; if the permit is not used to produce income or is for sale, the fair market value less any amount owed by the holder is included as a resource.

(b) For a resource listed in (a) of this section to be excluded, the resource must be distinguishable from other resources. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.228. DISPOSAL OF EXCESS RESOURCES. (a) If the nonexcludable resources of an otherwise eligible applicant exceed the resource limits of 2 AAC 42.225, assistance will be provided if the applicant enters into an agreement with the

(1) Social Security Administration under 20 C.F.R. 416.1240 – 20 C.F.R. 416.1244 to dispose of the excess resources and to repay SSI benefits; and

(2) department to repay assistance provided during the duration of the SSI agreement, in the amount of the proceeds of the disposal less the amount repaid to SSI or the assistance provided, whichever is smaller.

(b) If the nonexcludable resources of an otherwise eligible applicant whose income exceeds SSI standards exceed the resource limits of 2 AAC 42.225 and the applicant has, in cash or negotiable instruments, no more in nonexcludable resources than three times the monthly SSI payment standard for an eligible individual, or eligible couple if living with a spouse, assistance will be provided if the applicant enters into an agreement

(1) with the department to dispose of the excess resources at their current market value within nine months for real property or within three months for personal property; the department may extend the three-month period to dispose of personal property by an additional three months if circumstances beyond the applicant's control prohibit disposal; and

(2) to repay the assistance provided during the time the agreement is in effect or the proceeds of the disposal, whichever is less. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.230. SPOUSAL INCOME AND RESOURCES. (a) Subject to allowable exclusions, the income and resources of a spouse who is living with an individual seeking assistance under this chapter are considered available to the individual for purposes of computing the amount of the individual's income under 2 AAC 42.233. The department will apply the standards to prevent spousal impoverishment established under the Medicaid requirements of 42 U.S.C. 1396r-5 (Title XIX of the Social Security Act, as amended) or a regulation adopted under that statute.

(b) If the individual lives with a spouse and the income of that spouse is considered available to the individual under (a) of this section, certain types of income of the spouse, excluded under the APA program in 7 AAC 40, are also excluded under this chapter in determining the total monthly income, including

(1) the amount of any financial assistance furnished by a state, political subdivision of a state, or the United States on the basis of need, and the amount of any income taken into account in determining eligibility for and amount of that assistance;

(2) a grant, scholarship, or fellowship to the extent used to pay tuition or fees to an educational institution;

(3) payments received for the foster care of a child who is ineligible for SSI or assistance under 7 AAC 40;

(4) the value of food stamps, United States Department of Agriculture donated foods, and home produce and subsistence foodstuffs obtained for personal consumption;

(5) income tax refunds and any taxes on real property or food refunded by a public agency;

(6) any income used to comply with a court order of child support and support payments made under Title IV-D of the Social Security Act (42 U.S.C. 654);

(7) the value of any support and maintenance furnished to a spouse, parent, spouse of a parent, or children who reside with the individual seeking assistance and are ineligible for SSI or assistance under 7 AAC 40;

(8) payments made under AS 47.45 (Alaska Longevity Bonus);

(9) income needed to fulfill a plan for achieving self-support that has been approved by the Social Security Administration or by the division of vocational rehabilitation; and

(10) income that is not listed in this subsection, but is excluded under 2 AAC 42.222(a)(1) – (30).

(c) Unless otherwise specified, income that is excluded in this section is not included as a resource. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.233. INCOME COMPUTATION. The following computations are made to determine total monthly income:

(1) the monthly income available to the individual seeking financial assistance is identified by source, type, and amount;

(2) from the amounts identified under (1) of this section are subtracted any amounts excluded under 2 AAC 42.222 or 2 AAC 42.230;

(3) the resulting amounts derived under (2) of this section are added and rounded to the nearest dollar; this amount, which cannot be less than zero, is the total monthly income. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.234. DEFINITIONS FOR TERMS USED IN 2 AAC 42.220 – 2 AAC 42.233. For purposes of 2 AAC 42.220 – 2 AAC 42.233, unless the context otherwise requires,

(1) "earned income" means wages or other compensation paid by an employer in exchange for service rendered; in the case of a self-employed person, "earned income" means gross earnings less the cost of doing business;

(2) "income" means property, money, or service received by the individual, together with a spouse, if any, under 2 AAC 42.230, that can be used, directly or indirectly, to meet the individual's need for food, clothing, and shelter;

(3) "living with" means residing as a family unit in a single residence, except that

(A) spouses, both of whom are otherwise eligible for assistance, who have separated without either having taken another spouse are rebuttably presumed to be living together unless they have been separated for six months;

(B) spouses, only one of whom is otherwise eligible for assistance, who have separated are rebuttably presumed to no longer live together on the first day of the calendar month following the month of separation; and

(C) spouses who have separated because one spouse enters long-term medical or nursing care are considered to no longer live together on the first day of the calendar month following the month of separation;

(4) "proceeds" means the sale price of the resource less any amount owed on the resource and any cost of its disposal;

(5) "resources" means any real or personal property that an individual, together with a spouse, if any, under 2 AAC 42.230, owns and can convert to cash to be used for the individual's support and maintenance;

(6) "spouse" means a person who is legally married;

(7) "unearned income" means income that is not earned, including income from an annuity, pension or retirement payments, disability benefits, veteran's compensation and pensions, workers compensation payments, social security payments, black lung benefits, assistance payments such as Supplemental Security Income (SSI), Alaska Temporary Assistance Program, Bureau of Indian Affairs general assistance, railroad retirement, unemployment compensation, insurance payments, support and alimony, gifts and prizes, inheritances, rents, dividends, royalties, interest, and any income considered available to the individual under 2 AAC 42.230. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.235. CONCURRENT APPLICATIONS; REIMBURSEMENT TO DEPARTMENT BY RESIDENT OR BY ASSISTED LIVING HOME. (a) An individual who applies for assistance under this chapter must also submit an application to each agency, organization, or program that provides financial assistance for which the individual may be eligible, including Social Security, SSI, Medicaid, APA, the home and community-based waiver services program under 7 AAC 43.1000 – 7 AAC 43.1110, and the programs listed in 2 AAC 42.240(a) and (b). Each application must be submitted within 30 days after filing an application for assistance under this chapter. The department, or a responsible person acting on the individual's behalf, may assist the individual in submitting each application. The individual's failure to apply for each program will result in denial of assistance under this chapter, unless the department determines that the individual is ineligible for a specified program.

(b) The department may also require an individual to apply for other benefits for which the department believes the individual is eligible. These benefits include veteran's and disability insurance benefits, worker's compensation, unemployment compensation, retirement system benefits, awards, and annuities. The individual's failure to apply for the benefits, after being given 30 days' written notice, may result in denial of assistance under this chapter. The department will provide to the assisted living home a copy of the written notice if the individual is a resident when notice is given. An assisted living home that receives a notice under this subsection may choose to immediately issue a notice under 2 AAC 42.296, advising that the individual may be subject to involuntary discharge from the home if the individual fails to apply for benefits as requested by the department under this subsection.

(c) A resident of an assisted living home, placed in the home under 2 AAC 42.250, who is later determined eligible for other assistance applied for as required by (a) and (b) of this section, or whose total monthly countable income exceeds the minimum daily reimbursement rate set under 2 AAC 42.285, shall

(1) inform the department of any payments or benefits for which the resident has been determined eligible; and

(2) forward to the department

(A) any retroactive payments received, up to the amount the department has provided for that resident under this chapter, if the additional assistance received is intended to cover any portion of the same care that the assistance under this chapter covered for that resident; and

(B) an amount that reimburses the department for assistance paid under this chapter for any period that the resident's total monthly countable income exceeded the minimum daily reimbursement rate set under 2 AAC 42.285.

(d) If an assisted living home receives a payment, including a retroactive payment, from another agency, organization, or program, or from a family member, relative, or other person, for providing care to a resident receiving assistance under this chapter, the administrator shall reimburse the department, up to the amount the department has provided for that resident under this chapter, if the additional assistance received is intended to cover any portion of the same care that the assistance under this chapter covered for that resident.

(e) The department may require an assignment of rights to bill for and receive reimbursement for assistance provided under this chapter from

(1) a resident receiving assistance under this chapter; or

(2) an assisted living home that is entitled to receive a retroactive payment from another agency, organization, or program for providing care to a resident receiving assistance under this chapter for financial assistance received that is intended to cover any portion of the same care that the assistance under this chapter covered for that resident. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.240. ALTERNATIVE FINANCIAL ASSISTANCE. (a) An individual who is eligible for one or more of the following programs is not eligible for assistance under this chapter until available benefits under each program have been exhausted:

(1) a 24-hour care or treatment program for alcoholism or drug abuse financed by the Department of Health and Social Services under AS 47.37; and

(2) an inpatient mental health program for the mentally ill financed under AS 47.30.

(b) An individual who is eligible for assisted living care or a training program for the developmentally disabled under AS 47.80, is eligible for assistance under this chapter only if there is space available in an assisted living home after placement of individuals who are not eligible for that type of program.

(c) An individual must apply for each program specified in (a) and (b) of this section for which the department believes the individual is eligible. The department, or a responsible person acting on the individual's behalf, may assist the individual in submitting an application. An individual who fails to apply for each program, after being given 30 days' written notice of the requirement, will be denied assistance under this chapter. A copy of the written notice will also be provided to the assisted living home if the individual is a resident when notice is given. An assisted living home that receives a notice under this subsection may choose to immediately issue a notice under 2 AAC 42.296, advising that the individual may be subject to involuntary discharge from the home if the individual fails to apply for each program as requested by the department. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.245. FINANCIAL ASSISTANCE APPLICATION. (a) A vulnerable adult described in 2 AAC 42.215 may apply for assistance under this chapter on a form provided by the department. The department, or a responsible person acting on behalf of the vulnerable adult, may assist the vulnerable adult in completing the application.

(b) Subject to (c) of this section, if the department determines that the applicant meets the eligibility criteria established in 2 AAC 42.215 – 2 AAC 42.240, the applicant must submit to a medical examination by a licensed physician chosen by the applicant from those physicians enrolled with the Department of Health and Social Services under 7 AAC 43, or by a physician assistant or a nurse practitioner chosen by the applicant. The physician, physician assistant, or nurse practitioner shall furnish the department a written report on a form provided by the department. The department may pay the costs of the examination and necessary transportation to and from the place of examination if the applicant requires immediate protection and if funding is available.

(c) The department may dispense with the medical examination requirement in (b) of this section if a current medical report is available. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.250. ELIGIBILITY DETERMINATION AND PLACEMENT. (a) Except for an emergency placement under 2 AAC 42.298, within 30 days after the department receives an identifiable application for assistance under this chapter, the department will forward a written eligibility decision to the applicant. The time period may be extended by agreement of the applicant and the department when a decision cannot be rendered because of a factor that is beyond the control of the applicant or the department.

(b) After consulting with an eligible individual, available family members, a court-appointed representative, or a representative appointed by the individual, the department will assist in selecting an appropriate assisted living home that has available space, and that accepts placements under this chapter. An individual who has applied for residential supported living services under 7 AAC 43.1000 – 7 AAC 43.1110 may not be placed in an assisted living home under this chapter until residential supportive living services have been authorized under 7 AAC 43.1000 – 7 AAC 43.1110, unless care cannot be provided in the individual's home, or in a nursing facility, acute care hospital, or other appropriate facility. The division of vocational rehabilitation, in the Department of Education and Early Development, will be consulted on the placement of a vocational rehabilitation client.

(c) The department will at least semiannually review the individual's placement to determine whether the individual continues to need assisted living care and whether the particular assisted living home continues to meet the individual's needs. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.255. AVAILABILITY OF HEARING. An individual is entitled to a prompt hearing, in accordance with 2 AAC 42.300 – 2 AAC 42.390, before a department representative, upon oral or written request directed to any division employee. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.260. REPORT OF CHANGE. An individual receiving assistance under this chapter must report to the department any change in circumstances that could affect eligibility or the amount of assistance. A report of change must be made within 10 days after the event occurs, and may be made by a responsible person acting on the individual's behalf. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.265. REVIEW OF ELIGIBILITY. (a) Upon receiving information indicating a change in an individual's situation that could affect eligibility or the amount of assistance under this chapter, the department will investigate and, if necessary, adjust, suspend, or terminate the assistance.

(b) An individual who receives assistance under this chapter, or a responsible person acting on the individual's behalf, must annually complete a review application. As a result of this review procedure, the department may continue, adjust, suspend, or terminate the assistance.

(c) Upon taking action under either (a) or (b) of this section, the department will provide notice as required by 2 AAC 42.325. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.270. ASSISTED LIVING HOME GRANT AGREEMENT. (a)

Application for an assisted living home grant agreement must be made by an assisted living home on a form supplied by the department. The department will annually send an application form to each assisted living home licensed by the department under AS 47.33 and 7 AAC 75, adopted by reference in 2 AAC 42.010. The home must submit the application to the department within 30 days after receiving the form to be considered eligible for an agreement.

(b) An assisted living home grant agreement between the department and an assisted living home will

(1) include the appropriate minimum daily reimbursement rate under 2 AAC 42.285; and

(2) incorporate by reference each resident's residential service contract executed under AS 47.33.210 and assisted living plan prepared under AS 47.33.220 and 47.33.230, that describe the services the home must provide to the individual in accordance with AS 47.24, AS 47.33, 2 AAC 42.295, and 7 AAC 75.

(c) A home must agree to

(1) review the application of each individual who is referred by the department;

(2) comply with the standard established in 2 AAC 42.275(d); and

(3) report to the department any absence or discharge required to be reported by 2 AAC 42.296.

(d) The agreement may be terminated by either party upon 30 days' advance written notice to the other party. The agreement may be terminated by the department if the home's license is modified under AS 47.33.550 or 7 AAC 75.080, adopted by reference in 2 AAC 42.010, or if the home fails to comply with the terms contained in (b) and (c) of this section. The department may immediately terminate an agreement if the home's license is revoked. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.275. PAYMENT BY INDIVIDUAL. (a) The total monthly countable income considered available to an individual under 2 AAC 42.233, plus APA benefits and the Alaska longevity bonus payment, if applicable, and any other financial assistance for which the individual may be eligible and which is not excluded under 2 AAC 42.222, will be applied first toward the personal-needs allowance required by (b) of this section, and then toward the cost of the individual's assisted living care.

(b) An individual may retain the following amount of the total monthly countable income as a personal-needs allowance, which may be used for clothing, unreimbursable medical expenses, and personal incidentals:

(1) \$100 for an individual who is eligible for Medicaid or chronic and acute medical assistance coverage; and

(2) \$150 for an individual who is not eligible for Medicaid or chronic and acute medical assistance coverage.

(c) The department will inform the individual and the assisted living home of the amount of the individual's share of the cost of care. The home shall collect the amount directly from the individual.

(d) An assisted living home may not request or accept from or on behalf of an individual who receives assistance under this chapter any payment in excess of the amount specified in (c) of this section. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.280. PAYMENT BY DEPARTMENT. (a) For an individual who is placed in an assisted living home under 2 AAC 42.250, the department will pay the appropriate minimum daily reimbursement rate established by 2AAC 42.285, multiplied by the number of days of actual residence, minus the individual's share of the cost of care as calculated under 2 AAC 42.275.

(b) Except for an emergency placement under 2 AAC 42.298, payment will begin only after an eligibility determination has been made under 2 AAC 42.250. The department will make payment directly to the home on a monthly basis for services provided under 2 AAC 42.295. Payment will cover the day of admission, but not the day of departure.

(c) The department's payment will not increase to compensate for the withholding of an individual's Social Security, SSI, or APA benefit when the withholding is due to an overpayment caused by fraud or failure to report a change, unless protection of the individual outweighs the issue of that fraud or failure to report.

(d) If an individual placed in an assisted living home under 2 AAC 42.250 has no income, the department may pay a personal-needs allowance of \$100 monthly to the home for that individual. The home shall give the personal-needs allowance to the individual, unless the home has obtained written authorization under 7 AAC 75.310, adopted by reference in 2 AAC 42.010, to manage the individual's personal-needs allowance, or management of the allowance is included in the individual's residential services contract executed under AS 47.33.210 and assisted living plan prepared under AS 47.33.220 and 47.33.230. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.285. MINIMUM DAILY REIMBURSEMENT RATES. (a) The minimum daily reimbursement rate set in this section is for each individual placed in an assisted living home under 2 AAC 42.250 and is to assist in payment for

- (1) housing and food service; and
- (2) the basic services described in 2 AAC 42.295.

(b) Subject to (c) and (d) of this section, the minimum daily reimbursement rate is

- (1) \$50 from September 1, 2000 through June 30, 2001;
- (2) \$60 from July 1, 2001 through June 30, 2002; and
- (3) \$70 beginning July 1, 2002.

(c) The rate set in (b) of this section will be adjusted to reflect regional differences in the cost of doing business, based on the region in which the provider is located. The rate adjustments, listed by the designated planning regions described at Table 1 of the Alaska Commission on Aging State Plan for Services 2001 - 2003, issued by the Alaska Commission on Aging, and adopted by reference, are as follows:

- (1) for Anchorage – no adjustment;
- (2) for the southcentral region, not including Anchorage – 1.04;
- (3) for the southeast region – no adjustment;

- (4) for the interior region – 1.15;
- (5) for the southwest region – 1.33;
- (6) for the northwest region – 1.38.

(d) The department will annually review the minimum daily reimbursement rate in (b) of this section and the multiplying factor in (c) of this section and may adjust the rate to reflect changes in the United States Department of Labor consumer price index and the state cost-of-living differentials determined by the department and the Alaska Commission on Aging.

(e) The minimum daily reimbursement rate paid on behalf of a resident will be discontinued for any day that the resident is not living in the assisted living home unless the department approves a temporary absence from the home, not to exceed 30 days.

(f) For purposes of determining eligibility for financial assistance under this section and from other agencies, organizations, or programs, or from a family member, relative, or other person, 40 percent of the minimum daily rate in (b) of this section, before adjustment under (c) or (d) of this section, will be considered payment for housing and food service, with the balance considered payment for services. If, in addition to receiving assistance under this section, a resident also receives financial assistance from another agency, organization, or program for the cost of services provided in the assisted living home, that resident will be eligible under this section for only that portion that is not paid by another agency, organization, or program. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

Editor's note: A copy of the Alaska Commission on Aging State Plan for Services 2001 - 2003, issued by the Alaska Commission on Aging, Table 1 of which is adopted by reference in 2 AAC 42.285, may be reviewed at the offices of the Division of Senior Services, 3601 C Street, Suite 310, Anchorage, AK 99503; telephone (907) 269-3666. The most recent version of the state plan is also available at <http://www.alaskaaging.org/>.

2 AAC 42.290. AUGMENTED RATES. (a) Except for a resident who also receives financial assistance from another agency, organization, or program for the cost of services provided in the assisted living home, the department may augment the minimum daily reimbursement rate set in 2 AAC 42.285 if a resident requires assistance with four or more activities of daily living, or if a resident requires a level of care, monitoring, and protective service that is significantly higher than that required for other residents of the home, including other residents with an impairment described in this subsection, to protect the resident from abuse, neglect, or exploitation because of

(1) severe alcohol or drug dependency acting out behavior, including use of alcohol or drugs in or out of the home;

(2) severe mental health, mental impairment, or emotional disturbance issues resulting in disruptive acting out behaviors, including aggressive, violent, offensive, or assaultive behavior;

(3) a major health impairment; or

(4) other variables or factors that make the resident extremely difficult to place and protect in an assisted living home.

(b) An augmented rate of \$1 to \$22 a day will be paid for each resident described in (a) of this section if the department finds that the resident is eligible for an augmented rate. The amount of the augmented rate will be based on the number of activities of daily living provided, and the level of care, monitoring, and protective services required as follows:

(1) for a resident who requires assistance with four or more activities of daily living, the augmented rate is \$7 a day for each additional activity of daily living, not to exceed \$22 a day;

(2) for a resident described in (a)(1), (2), (3), or (4), the augmented rate is \$15 a day;

(3) for a resident who requires assistance with four or more activities of daily living and who is described in (a)(1), (2), (3), or (4) of this section, the augmented rate is \$22 a day.

(c) For an emergency placement, an additional augmented rate of up to \$10 a day will be paid for a person described in (b)(1) or (2) of this section, not to exceed \$22 a day. An augmented rate under this subsection will be paid for no more than 30 days, unless the department determines that payment for additional days is necessary to protect the resident.

(d) An augmented rate paid on behalf of a resident is discontinued for any day that the resident is not living in the assisted living home. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.295. SERVICES REQUIRED TO BE PROVIDED BY LICENSED ASSISTED LIVING HOMES. (a) A licensed assisted living home must provide housing, food service, and all other services that are required to meet the purposes of this chapter, AS 47.33, and 7 AAC 75, adopted by reference in 2 AAC 42.010. Housing, food service, and other services must be provided in a way that promotes each resident's safety, welfare, and independence and that assures protection of each resident's rights under AS 47.33.300 – 47.33.360.

(b) In addition to the housing and food service requirements of 7 AAC 75, the basic services required under this section, depending on each resident's needs as described in the resident's residential services contract executed under AS 47.33.210 and assisted living plan prepared under AS 47.33.220 and 47.33.230, include

- (1) the general range of care described in 2 AAC 42.205;
- (2) protective services;
- (3) personal assistance;
- (4) supportive services;
- (5) assistance with the activities of daily living and the instrumental activities of daily living as indicated in a resident's assisted living plan;
- (6) an organized program that encourages participation in activities within the home and the community;
- (7) general awareness of each resident's general whereabouts, in the home and in the community;
- (8) monitoring each resident's activities while on the premises; and

(9) arranging for or providing transportation to and from appointments if a resident is unable to take public transportation, and arranging for or providing an escort, if needed.

(c) In addition to the basic services listed in (b) of this section, an assisted living home may provide the additional health-related services described in AS 47.33.020(c) – (i).

(d) For a resident who, in addition to receiving assistance under this chapter, also receives financial assistance from another agency, organization, or program for the cost of services provided in the assisted living home, the provisions of 2 AAC 42.285(f), dealing with the percentage of the minimum daily rate that is considered payment for housing and food service, apply. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.296. ABSENCE OR DISCHARGE. (a) A home with which the department has entered into an assisted living home grant agreement under 2 AAC 42.270 shall immediately report to the department the death or voluntary discharge of a resident who receives assistance under this chapter. A home shall give the department, and, as required by AS 47.33.360, shall give the resident, 30 days' advance written notice of an involuntary discharge by the home of a resident who receives assistance under this chapter, unless the discharge is for medical reasons or an emergency transfer out of the home is ordered by the resident's physician. This notice is not required for a resident subject to emergency placement under 2 AAC 42.298 who was given notice by the department under 2 AAC 42.298(c) at the time of placement, although the home may choose to issue its own notice at the time of placement.

(b) A home shall immediately report to the department the absence of a resident who receives assistance under this chapter, unless the absence is for social reasons and will not exceed three days. No payment for assistance under this chapter will be made by the department for a social absence exceeding three days, unless it is previously approved in writing by the department. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.33.360 AS 47.33.920
AS 47.24.017

2 AAC 42.298. EMERGENCY PLACEMENT. (a) A home with which the department has entered into an assisted living home grant agreement under 2 AAC 42.270 may admit an individual without an earlier eligibility determination under 2 AAC 42.250, if the department determines that the individual is immediately subject to, or at risk of, abuse, neglect, or exploitation, and has no immediately available residential care.

(b) For an emergency placement under (a) of this section, the department will pay for no more than 30 days of actual residence before the individual receives an eligibility determination under 2 AAC 42.250, unless the department determines that payment for additional days is necessary to protect the resident.

(c) At the time of emergency placement under this section, the department will provide written notice to the individual being placed in an assisted living home that the resident must vacate the home after the appropriate number of days unless the resident has been determined to be eligible for placement under 2 AAC 42.250, or unless the department notifies the resident of an extension under (b) of this section. A copy of the notice will be provided to the home at the time of placement. The home may choose to issue its own notice at the time of placement, but is not required to do so. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.299. WAIVER OF REQUIREMENT OF 2 AAC 42.200 – 2 AAC 42.298. The director may waive a requirement of 2 AAC 42.200 – 2 AAC 42.298 if necessary for the protection of a vulnerable adult, unless the requirement is one imposed under AS 47.24, AS 47.33, or 7 AAC 75 and the home has not been granted a variance under 7 AAC 75.410 – 7 AAC 75.490, adopted by reference in 2 AAC 42.010. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

ARTICLE 3. HEARING PROCEDURES.

Section

- 300. Applicability
- 305. Opportunity for hearing
- 310. Request for hearing
- 315. Time limit on availability of hearing
- 320. Notice of changes in the law
- 325. Notice of proposed agency action
- 330. Contents of notice
- 335. Time and place of hearing
- 340. Group hearings
- 345. Denial or dismissal of hearing
- 350. Hearing assistance
- 355. Conduct of hearings
- 360. Medical evidence
- 365. Hearing officer
- 370. Decision of hearing officer
- 375. Continuation of assistance; liability
- 380. Retroactive assistance
- 385. Appeal to the director; notice of appeal decision
- 390. Decisions public

2 AAC 42.300. APPLICABILITY. The provisions of 2 AAC 42.300 – 2 AAC 42.390 apply to applicants for and recipients of financial assistance granted by the division under 2 AAC 42.200 – 2 AAC 42.299 for the protection of vulnerable adults who are residents of assisted living homes. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.305. OPPORTUNITY FOR HEARING. An opportunity for a hearing must be granted to an individual whose

(1) application under this chapter is denied or is granted in a way that is different from that sought by the individual;

(2) claim to financial assistance contained in an application submitted under this chapter, is denied or is not acted upon within 30 days; or

(3) receipt of financial assistance the division intends to modify or terminate. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.310. REQUEST FOR HEARING. A request for a hearing within the scope of 2 AAC 42.305 may be made to the division orally or in writing by the aggrieved individual, or by a responsible person acting on the individual's behalf. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.315. TIME LIMIT ON AVAILABILITY OF HEARING. A hearing is available upon request only for an individual who makes an oral request or mails a written request within 30 days after receipt of notice of the division action by which the individual is aggrieved. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.320. NOTICE OF CHANGES IN THE LAW. The division shall send a notice to each affected recipient of financial assistance under this chapter, the recipient's authorized representative, and the assisted living home where the recipient is a resident when a change in applicable law requires automatic adjustment of financial assistance received under this chapter that would adversely affect a group of recipients or all recipients. This notice must contain a statement of the specific change in the law requiring the adjustment, and a statement of the recipient's right to a hearing if the recipient disagrees with the division's computation of the financial assistance that will be paid for that recipient under the new law. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.325. NOTICE OF PROPOSED AGENCY ACTION. The division shall give written notice to an individual, the individual's authorized representative, and to any affected assisted living home at least 10 days before the date the division intends to take action denying, suspending, reducing, or terminating assistance under this chapter, unless

(1) factual evidence exists of the individual's death;

(2) the individual indicates in writing that assistance is no longer desired, or gives information that requests termination or reduction of assistance and also indicates in writing that the individual understands the consequences of reporting this information;

(3) an individual has been admitted or committed to an institution or facility other than an assisted living home, and is no longer eligible for assistance under this chapter;

(4) the individual's whereabouts are unknown and department mail directed to the last known address has been returned by the post office indicating no known forwarding address; or

(5) factual evidence exists that the individual has been accepted for assistance in another jurisdiction. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.330. CONTENTS OF NOTICE. Written notice under 2 AAC 42.325 must detail the reasons for the proposed adverse action, including the statute or regulation upon which that action is based. The notice will also inform the individual of the right to a hearing, how to request a hearing, that the division will, upon request, provide assistance in making a hearing request, by whom the individual may be represented at a hearing, and the conditions, if any, under which assistance may continue if a hearing is requested. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 43.335. TIME AND PLACE OF HEARING. Within 10 days after the division receives a hearing request, and at least 15 days before the date the hearing is scheduled, unless the individual who requested the hearing agrees to a shorter time period, the division shall mail a notice to the individual, the individual's authorized representative, and any affected assisted living home, stating the time, date, and place of the hearing. The place must be one reasonably convenient to the individual and the division. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.340. GROUP HEARINGS. The hearing officer may consolidate two or more requests for hearing by conducting a single group hearing if the sole issue involved is one of statute or regulation or changes in statute or regulation. A consolidation of requests does not affect the right of a member of the group to withdraw from the group before or during the group hearing in favor of an individual hearing, and does not affect the right of each member of the group to present the member's own case or be represented by the member's authorized representative at the group hearing. The hearing officer shall inform each individual affected by a consolidation of requests that a consolidation has been made and that the right to individual withdrawal exists. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.345. DENIAL OR DISMISSAL OF HEARING. The hearing officer may deny or dismiss a hearing request or terminate a hearing if

(1) the issue by which an individual is aggrieved is not one of those set out in 2 AAC 42.305;

(2) the individual withdraws the request in writing;

(3) the sole issue deals with a law requiring automatic adjustment of financial assistance affecting a group of recipients or all recipients, and the issue is not one of incorrect computation; or

(4) the individual fails, without good cause as determined by the hearing officer, to appear in person, telephonically, or by authorized representative at the scheduled hearing. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.350. HEARING ASSISTANCE. Upon oral or written request, the division shall provide assistance, as appropriate, in requesting a hearing, in obtaining representation at the hearing, in preparing the individual's case, and in gathering witnesses and documents to be used in presenting the claim. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.355. CONDUCT OF HEARINGS. The division, the individual who requested the hearing, or the individual's authorized representative each has the right to

(1) adequate time to examine documents before the hearing to permit preparation of the case;

(2) self-representation, representation by an attorney, or representation by any other person who may be helpful in presenting the case;

(3) present witnesses and documents pertinent to the case;

(4) establish facts and advance arguments pertinent to the case;

(5) question or refute testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.360. MEDICAL EVIDENCE. If the hearing involves medical issues, the division shall provide for a medical assessment by a qualified person acceptable to the individual and the division. However, this person may not be the person who was directly involved in making the decision that is at issue in the hearing. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.365. HEARING OFFICER. (a) If an individual requests a hearing, the commissioner or the commissioner's designee will appoint a hearing officer with power to decide the dispute, subject to appeal to the director. The hearing officer will be an employee of the department who has not participated in the action at issue.

(b) The hearing officer shall hold the hearing and receive any testimony, evidence, and material introduced at the hearing. The hearing officer shall render a decision based on the applicable statutes or regulations, and on the hearing record, and shall furnish the individual, the individual's authorized representative, and any affected assisted living home with a written decision. The decision must state the reason for that decision, the evidence and the statutes or regulations supporting the decision, and a statement of the individual's right to appeal that decision.

(c) Except as otherwise specified in (b) of this section, the role of the hearing officer is limited to the ascertainment of whether the statutes or regulations have been properly applied in the case and whether the computation of the amount of financial assistance, if in dispute, is in accordance with them. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.370. DECISION OF HEARING OFFICER. Unless the time period is extended by mutual consent, the hearing officer shall render a decision within 90 days after the division receives a request for hearing. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.375. CONTINUATION OF ASSISTANCE; LIABILITY. A recipient of assistance who continues to satisfy all eligibility criteria other than those at issue in the hearing request will, upon filing a hearing request, have the assistance reinstated retroactively or continued until the date that the hearing officer's decision is rendered.

(b) If a request for hearing has caused a recipient's assistance to be reinstated or continued under this section, and the decision of the hearing officer is that the division action at issue was correct, the hearing officer may require that the assistance provided during the hearing process be repaid by the recipient. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.380. RETROACTIVE ASSISTANCE. If the hearing officer, or the director in the case of an appeal under 2 AAC 42.385, determines that the division action at issue was in error, the division shall provide assistance retroactive to the effective date of the erroneous denial, modification, suspension, termination, or reduction. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.385. APPEAL TO THE DIRECTOR; NOTICE OF APPEAL

DECISION. (a) An aggrieved individual may file an appeal to the director in writing within 15 days after receipt of the hearing officer's decision. Within 30 days after receipt of the appeal request, the director shall review the hearing record, the hearing officer's decision, and applicable statutes and regulations, and render a decision on the appeal.

(b) The division shall send the individual, the individual's authorized representative, and any affected assisted living home written notification containing a statement of the decision, the reasons for that decision, and a statement of the individual's right to judicial review. The decision of the director constitutes final administrative action. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

2 AAC 42.390. DECISIONS PUBLIC. Subject to state and federal statutes and regulations safeguarding certain financial assistance information, hearing decisions of the division are public information. (Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011 AS 47.24.017 AS 47.33.920

ARTICLE 4. GENERAL PROVISIONS.

Section

400. Definitions

2 AAC 42.400. DEFINITIONS. Unless the context indicates otherwise, in this chapter,

- (1) "abuse" has the meaning given in AS 47.24.900;
- (2) "activities of daily living" has the meaning given in AS 47.33.990;
- (3) "APA" means the Adult Public Assistance program;
- (4) "Adult Public Assistance program" means the program administered by the division of public assistance under 42 U.S.C. 1381 – 42 U.S.C. 1383, AS 47.25.430 – 47.25.615 and 7 AAC 40;
- (5) "Alaska longevity bonus" means the cash benefit program administered by the Department of Administration under AS 47.45.010 – 47.45.160;
- (6) "assisted living home" means a home that has been licensed by the department under AS 47.33 and 7 AAC 75, adopted by reference in 2 AAC 42.010, and that has entered into an assisted living home grant agreement with the department;
- (7) "caregiver" has the meaning given in AS 47.24.900;
- (8) "commissioner" means the commissioner of the Department of Administration;
- (9) "department" means the Department of Administration;
- (10) "director" means the director of the division of senior services;
- (11) "division" means the division of senior services of the Department of Administration;
- (12) "division of public assistance" means the division of public assistance of the Department of Health and Social Services;
- (13) "division of vocational rehabilitation" means the division of vocational rehabilitation of the Department of Labor and Workforce Development;

- (14) “exploitation” has the meaning given in AS 47.24.900;
- (15) “financial assistance” and “financial assistance for the protection of vulnerable adults” means financial assistance authorized under AS 47.24;
- (16) "hearing officer" means the person appointed under 2 AAC 42.365;
- (17) “instrumental activities of daily living” has the meaning given in AS 47.33.990;
- (18) "managing money," as that term is used in the definition of "instrumental activities of daily living" in AS 47.33.990, means the safekeeping and management of a resident's money under AS 47.33.040;
- (19) "Medicaid" means the medical assistance program administered by the division of medical assistance under 42 U.S.C. 1396 - 42 U.S.C. 1396v and AS 47.07.010 – 47.07.075 and 47.07.900;
- (20) “neglect” has the meaning given in AS 47.24.900;
- (21) “personal assistance” has the meaning given in AS 47.33.990;
- (22) “protective services” has the meaning given in AS 47.24.900;
- (23) "provider" means a person, business, or private or public agency or institution, that offers goods or services of a medical, dental, or pharmaceutical nature to the public;
- (24) “resident” means a resident of an assisted living home who is receiving financial assistance under this chapter;
- (25) “SSI” means Supplemental Security Income;
- (26) "Supplemental Security Income" means the Supplemental Security Income program administered by the federal government under 42 U.S.C. 1381 – 42 U.S.C. 1383c;
- (27) “supportive services” has the meaning given in AS 47.24.900;
- (28) “vulnerable adult” has the meaning given in AS 47.24.900.
(Eff. 6/28/2002, Register 162)

Authority: AS 47.24.011

AS 47.24.017

AS 47.33.920